

Decision 98-12-061 December 17, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

San Diego Gas & Electric Company, to report assessments of materials and supplies inventories and to establish principles necessary to appraise retained assets.

ORIGINAL
Application 98-05-041
(Filed May 1, 1998)

**ORDER PURSUANT TO RULE 6.5 OF
THE RULES OF PRACTICE AND PROCEDURE**

Rule 6.5 of the Rules of Practice and Procedure concerning changes in the need for hearing or preliminary categorization of a proceeding provides that

(b) If the assigned Commissioner, pursuant to Rules 6(a)(3), 6(c)(2), or 6(d), changes the preliminary determination on need for hearing, the assigned Commissioner's ruling shall be placed on the Commission's Consent Agenda for approval of that change.

Pursuant to Rule 6.1, the Commission has preliminarily determined in Resolution ALJ 176-2994 dated June 4, 1998, that the above-entitled matter is a ratesetting proceeding that was expected to go to hearing. By an assigned Commissioner's ruling dated November 20, 1998, the assigned Commissioner, Commissioner P. Gregory Conlon, found that the need for hearing determination should be changed.

We have considered our preliminary determinations in this matter and the assigned Commissioner's ruling.

IT IS ORDERED that:

1. This proceeding does not require that hearings be held.
2. Under Rule 6.6, this order is a final determination that a hearing is not needed in this proceeding.

3. Ex parte communications shall be permitted, as provided in Rule 7(e). In all other respects, the rules and procedures in Article 2.5 of the Commission's Rules shall cease to apply to this proceeding. However, the proposed schedule and scope of issues contained in the scoping memo shall continue to apply.

This order is effective today.

Dated December 17, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners

Decision 98-12-062 December 17, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Blue Van Joint Venture to provide on-call door-to-door passenger stage service to the extent required to enter into a concessionaire agreement with Los Angeles International Airport.

Application 98-05-030
(Filed May 19, 1998)

OPINION

Summary

This decision grants the application of Blue Van Joint Venture (Blue Van or Applicant) for a certificate of public convenience and necessity to operate as a passenger stage corporation between Los Angeles International Airport (LAX) and points in Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties. It also partially grants the applicant's request for relief from certain regulatory requirements.

Discussion

Blue Van is a joint venture of four corporations (referred to by Applicant as "joint venturers"), each of which holds a passenger stage corporation (PSC) certificate and a charter-party carrier (TCP) permit from the Commission. The joint venturers are: Preferred Transportation, Inc. (PSC/TCP 8937), Tamarack Transportation, Inc. (PSC/TCP 9635), Arcadia Transit, Inc. (PSC/TCP 9224), and Mini-Bus Systems, Inc. (PSC/TCP 8016). Applicant states that it entered into the joint venture for the sole purpose of responding to a Request for Proposal (RFP) issued by LAX for nonexclusive door-to-door shuttle van concessions. Blue Van has designated the president of Tamarack Transportation, Inc. as its managing partner.

Exhibit B to the application is a copy of a letter to Blue Van dated April 29, 1998, from Kenneth Koss, Director of the Commission's Rail Safety and Carriers Division (RSCD or Staff). In this letter, Director Koss summarized an April 2, 1998 letter he had written to LAX officials in response to their inquiry about the operating authority status

of prospective concessionaires under the RFP. Staff's informal opinion was that a concessionaire, as the party responsible for carrying out the functions and requirements set forth in the concession agreement, would be operating or causing to operate a passenger stage service. Therefore, under the Public Utilities (PU) Code, the concessionaire would have to hold a PSC certificate, even if it is an "umbrella" or "overarching" organization whose underlying members or partners will actually operate the vehicles and hold PSC authority of their own.

Staff cited three sections of the PU Code as the basis for its opinion: (a) §226, which defines a passenger stage corporation as any corporation or person involved in the ownership, control, operation or management of a passenger stage vehicle; (b) § 1031, which prohibits any passenger stage corporation from operating, or causing to be operated, any passenger stage without authority from the Commission; and (c) § 1034.5, which requires every corporation or person holding itself out to the public as operating a passenger stage corporation to possess a PSC certificate. Also cited were the numerous duties and responsibilities to be fulfilled by a concessionaire at LAX, which in the Staff's view demonstrate a high degree of control over the operation. These include providing a minimum of 50 vans for door-to-door service, procuring and maintaining insurance, maintaining a radio dispatch and reservation system 24 hours per day, supervising drivers, providing curb coordinators, and resolving complaints in a timely manner. Director Koss requested Blue Van's compliance with PSC certification requirements should it be one of the successful RFP bidders.

Subsequently, Applicant and two other bidders were awarded concessions by LAX. Applicant now seeks a PSC certificate to operate under the concession in accordance with Staff's informal opinion. It requests authority to operate between LAX and all points in the Counties of Los Angeles, Orange, Riverside, San Bernardino, and Ventura. According to the RFP, Blue Van will operate under the SuperShuttle trade name. (Applicant's four joint venturers are franchisees of SuperShuttle Franchise Corporation.) RSCD recommends that Applicant be granted a PSC certificate.

Applicant also requests relief from certain requirements for which a PSC is normally responsible on the basis that it formed the joint venture only for the purpose

of entering into a concession agreement with LAX and that its four joint venturers will actually be responsible for providing shuttle van services to the public. Specifically, relief is requested from the requirements of (a) filing a tariff (b) filing an annual financial report, and (c) remitting the transportation reimbursement fee. Additionally, Applicant seeks a waiver of the notice requirements set forth in Rule 21(k) of the Commission's Rules of Practice and Procedure. Applicant's requests will be discussed individually.

Tariff Filing

Applicant states that shuttle van services under the concession agreement will be provided in accordance with the fares and the terms and conditions of service as set forth in the tariffs that each of the four joint venturers has on file with the Commission. It therefore requests relief from the tariff filing requirement.

RSCD recommends that Applicant's request for relief be denied. It cites PU Code § 486 et seq. as requiring every common carrier (which includes passenger stage corporations) to file with the Commission and keep open for public inspection schedules showing rates, fares, charges and classifications, and to observe such schedules. Staff also explains the practical considerations behind its recommendation. Since all of Blue Van's shuttle operations at LAX will be conducted using the SuperShuttle trade name. RSCD believes the public's interests are best served by having all SuperShuttle operations at LAX subject to a uniform set of fares and operating rules which are set forth in a single tariff, not four separate tariffs as Blue Van proposes. Otherwise, a passenger seeking to obtain fare or other service information about SuperShuttle will first have to determine which of the four joint venturers operating under the Blue Van/SuperShuttle banner is involved in the transportation. RSCD points out that the joint venturers hold PSC certificates with overlapping service territories, but their published tariff fares are not necessarily the same. Staff offers that requiring Blue Van to operate under only one tariff is simpler and more consumer-friendly.

Additionally, according to RSCD, LAX officials responsible for implementing the concession agreements recommend that Blue Van and the other concessionaires each have just one tariff. They believe a single tariff will facilitate the airport's administration of the concession agreement and will further LAX's goal of improving the quality of shuttle van services at its facility.

The tariffs that the joint venturers currently have on file with the Commission contain fares that have already been determined by the Commission to be reasonable. Each of the carriers has also been granted a Zone of Rate Freedom (ZORF) pursuant to PU Code § 454.2. RSCD recommends that Blue Van be authorized to file a tariff containing fares now published in any one or a combination of the four tariffs on file by the joint venturers, including ZORF fares.

We agree with RSCD's recommendations that Blue Van should be required to file a tariff as a condition of operating under a PSC certificate and that the previously approved fares contained in any of the existing tariffs of the joint venturers be used as the basis for such a tariff. By filing a tariff in this manner, Blue Van will comply with the statutory requirements cited by RSCD, meet the information needs of its passengers, and satisfy the concerns of LAX officials. We therefore will adopt RSCD's recommendations.

Annual Reports

The Commission's General Order (GO) 104-A requires every public utility (which includes passenger stage corporations) to file an annual report of its operations in such form and content as the Commission may prescribe. Applicant seeks a waiver from GO 104-A. It states that the four joint venturers will continue to comply with the annual report filing requirement.

Operations by the four joint venturers under the LAX concession will technically be as charter-party subcarriers to Blue Van pursuant to the provisions of Part 3.03 of GO 158-A. A passenger carrier which holds only TCP authority is not required to file an annual report. However, the joint venturers will continue to hold PSC authority to operate independently of Blue Van at places other than LAX. They therefore will still

be required to file an annual report containing information regarding all of their passenger carrier operations, both passenger stage and charter-party.

RSCD has no objection to Blue Van being granted the relief requested provided, as Applicant states, that the joint venturers will report the LAX concession operations in their respective PSC annual reports. Staff recommends that in lieu of filing an annual report, Blue Van's managing partner be required to certify annually by letter to the Commission that the joint venturers have in fact filed the requisite reports containing the financial information that Blue Van would otherwise be required to report on its own pursuant to GO 104-A. Accordingly, this financial information would be reported by the joint venturers as resulting from PSC operations, notwithstanding their technical status of charter-party subcarriers under Blue Van when operating at LAX. RSCD additionally recommends that Applicant be placed on notice that if in the future it files an application with the Commission for a fare increase, Blue Van will be expected to file a single financial statement of its operations to support the request.

We agree that in the circumstances, Applicant should be granted the requested relief. We will also adopt the recommendations made by RSCD.

Reimbursement Fee

PU Code § 421 et seq. requires passenger stage corporations and other transportation companies regulated by the Commission to pay a fee to the Commission to fund its regulatory activities. Fees collected are deposited in the Public Utilities Commission Transportation Reimbursement Account (PUCTRA). The fee level is determined annually by the Commission. Passenger stage corporations currently pay a PUCTRA fee of $\frac{1}{2}$ of 1% of gross revenue plus a minimum quarterly fee of \$10 or an annual fee of \$25. (Carriers are required to file a PUCTRA report quarterly unless their annual gross revenue is \$100,000 or less, in which case the report is filed on an annual basis.)

Applicant requests relief from payment of PUCTRA fees for the same reason it seeks relief from the annual report filing requirement, that is, the joint venturers will continue to comply with the requirement.

RSCD recommends granting partial relief to Applicant. It suggests that Blue Van be required to submit a quarterly PUCTRA report, but be required to remit only the minimum fee of \$10. Staff would allow, as Applicant proposes, the joint venturers to be responsible for payment of the percentage fee on passenger revenue generated under the LAX concession arrangement. However, RSCD would require Applicant to attach to each of its own quarterly reports a statement signed by its general partner certifying that the PUCTRA fees due on the concession revenue have been reported and paid by the joint venturers. RSCD further recommends that Applicant be placed on notice that in the event one or more of the joint venturers fails to timely submit a quarterly PUCTRA report, Blue Van's PSC certificate will be subject, after notice, to suspension and revocation in accordance with established Commission procedures.

We concur with RSCD's recommendations and will adopt them in this order.

Rule 21(k)

Applicant seeks waiver of the Commission's requirement that every applicant for a PSC certificate forward a copy of the application to each public transit operator operating in any portion of the territory sought to be served and mail notice of the application to all city and county governmental entities and regional transportation planning agencies within whose boundaries passengers will be loaded or unloaded. RSCD recommends that Applicant's request for a waiver be granted since Blue Van is seeking authority to serve territories already being served by its joint venturers under their respective PSC authorities. Staff believes in the circumstances that notice on the Daily Calendar was sufficient notice to affected agencies and governmental entities.

We concur with Staff and will grant the relief requested.

Carrier Responsibilities

Applicant states that it will not directly provide shuttle services to the public. Services under the LAX concession agreement will be provided by the four joint venturers using their own fleets of vehicles. While the Commission has no objection to this arrangement, we remind Applicant that as holder of a PSC certificate it will have ultimate responsibility for ensuring satisfactory service to the public and compliance

with rules and regulations applicable to passenger stage corporations as set forth in GO 158-A. In this regard, Part 7.01 of GO 158-A requires the carrier to respond within 15 days to any written complaint concerning transportation service provided or arranged by the carrier, and within the same number of days respond to Commission staff inquiries regarding complaints. It is desirable and appropriate that Blue Van through its general partner be responsible for responding to and resolving service complaints, notwithstanding that the service may have been provided in a vehicle operated by one of Applicant's joint venturers.

In Resolution ALJ 176-2994 dated June 4, 1998, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. Notice of the application appeared on the Commission's Daily Calendar on May 22, 1998. No protests have been received. Given this status, public hearing is not necessary, and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-2994.

Findings of Fact

1. Blue Van is a joint venture comprised of four corporations formed for the purpose of operating under a concession agreement at LAX.
2. Each of Blue Van's joint venturers holds authority from the Commission to operate as a passenger stage corporation and a charter-party carrier.
3. RSCD informed Applicant that because the LAX concession agreement requires the concessionaire to exercise a high degree of control over the conduct of the operation, it must hold a PSC certificate from the Commission to legally operate.
4. Blue Van requests authority to operate as an on-call passenger stage corporation between LAX and all points in the Counties of Los Angeles, Orange, Riverside, San Bernardino, and Ventura.
5. Blue Van requests a waiver from the requirements of filing a tariff, filing an annual financial report, and remitting the transportation reimbursement fee.
6. Blue Van requests a waiver from the notice requirements set forth in Rule 21(k) of the Commission's Rules of Practice and Procedure.

7. Notice of the application appeared on the Commission's Daily Calendar on May 22, 1998. There are no protests.

8. A public hearing is not necessary.

9. RSCD recommends that Applicant's request for a PSC certificate be granted.

10. RSCD recommends that Applicant be required to file a tariff to meet the requirements of PU Code § 486 et seq. and to provide the public with a single source of fare and operating information.

11. RSCD recommends that Applicant be relieved of the requirement of filing an annual financial report pursuant to GO 104-A provided that Blue Van's managing partner certifies annually that each of the four joint venturers has filed a report.

12. RSCD recommends that Applicant be relieved from the requirement that it remit the transportation reimbursement fee based on gross revenue provided Blue Van files a quarterly PUCTRA report with payment of the minimum fee and its general partner certifies that the joint venturers have paid the fee on gross passenger revenue derived from the LAX concession agreement.

13. RSCD recommends that in the event Applicant's joint venturers fail to report and pay PUCTRA fees on gross revenue derived from the LAX concession agreement, Blue Van's certificate be subject, after notice, to suspension and revocation in accordance with procedures established by the Commission.

14. RSCD recommends that Applicant be authorized to file a tariff containing fares published in the tariffs of the joint venturers currently on file with the Commission, including previously approved ZORF fares.

15. RSCD recommends that Applicant be granted a waiver from Rule 21(k) of the Rules of Practice and Procedure.

16. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment

Conclusions of Law

1. Blue Van's proposed operations as a provider of door-to-door shuttle van service under a concession agreement with LAX require passenger stage corporation authority from the Commission.

2. Public convenience and necessity requires that Blue Van be granted a certificate to operate as a passenger stage corporation pursuant to PU Code § 1031.

3. Blue Van should be required to file a tariff with the Commission to fulfill the requirements of PU Code § 486 et seq.

4. Blue Van should be authorized to publish in its tariff the fares, including previously approved ZORF fares, currently on file with the Commission in the tariffs of Applicant's joint venturers.

5. Blue Van should be relieved from the requirement of filing an annual financial report under GO 104-A provided each of its joint venturers files the requisite report and Blue Van certifies that its own financial information is included in those reports.

6. Blue Van should be granted partial relief from PUCTRA reporting and payment requirements provided it files quarterly reports with minimum payment and certifies that its joint venturers have or will pay fees on LAX concession revenue.

7. The requirements of Rule 21(k) of the Commission's Rules of Practice and Procedure should be waived in connection with this application.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Blue Van Joint Venture (Applicant) authorizing it to operate as a passenger stage corporation, as defined in Public Utilities (PU) Code § 226, between the points and over the routes set forth in Appendix PSC-11845 to transport persons, baggage, and/or express.

2. Applicant shall:

a. File a written acceptance of this certificate within 30 days after this order is effective.

- b. Establish the authorized service and file a tariff and timetable within 120 days after this order is effective.
- c. State in its tariff and timetable when service will start; allow at least 10 days' notice to the Commission; and make the tariff and timetable effective 10 or more days after this order is effective.
- d. Comply with General Orders (GO) Series 101 and 158, and the California Highway Patrol (CHP) safety rules.
- e. Comply with the controlled substance and alcohol testing certification program pursuant to PU Code § 1032.1 and GO Series 158.
- f. Comply with PU Code §§ 460.7 and 1043 relating to the workers' compensation laws of this state.

3. In establishing a tariff, Applicant is authorized publish fares contained in tariffs currently on file with the Commission by Preferred Transportation, Inc. (Preferred), Tamarack Transportation, Inc. (Tamarack), Arcadia Transit, Inc. (Arcadia) and/or Mini-Bus Systems, Inc. (Mini-Bus) including previously approved Zones of Rate Freedom

4. Applicant is relieved from the requirement of General Order 104-A to file an annual financial report, provided that Applicant's general partner certifies annually by letter to the Commission that Preferred, Tamarack, Arcadia, and Mini-Bus have each filed a report which includes financial information which Applicant would otherwise be required to report on its own. Applicant is placed on notice that if in the future it makes application to the Commission for a fare increase, it will be required to file a single financial statement of its operations to support the request.

5. Applicant is relieved from the requirement of remitting PUCTRA fees based on gross revenue provided that it submits quarterly PUCTRA reports with the minimum fee payment and attaches to each report a statement signed by its general partner certifying that PUCTRA fees due on Los Angeles International Airport concession revenue have been paid by Preferred, Tamarack, Arcadia and Mini-Bus. Applicant is placed on notice that in the event one or more of these carriers fails to timely submit a quarterly PUCTRA report, Applicant's PSC certificate will be subject, after notice, to suspension and revocation in accordance with established Commission procedures.

6. The notice requirements of Rule 21(k) of the Commission's Rules of Practice and Procedure are waived in this application.

7. Before beginning service to any airport, Applicant shall notify the airport's governing body. Applicant shall not operate into or on airport property unless such operations are also authorized by the airport's governing body.

8. Applicant is authorized to begin operations on the date that the Rail Safety and Carriers Division mails a notice to applicant that its evidence of insurance and other documents required by Ordering Paragraph 2 have been filed with the Commission and that the CHP has approved the use of Applicant's vehicles for service.

9. The certificate of public convenience and necessity to operate as a passenger stage corporation (PSC 11845), granted herein, expires unless exercised within 120 days after the effective date of this order.

10. The application is granted as set forth above.

11. This proceeding is closed.

This order is effective today.

Dated December 17, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

RSCD/PW

Appendix PSC-11845

Blue Van Joint Venture
(a joint venture)

Original Title Page

**CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
AS A PASSENGER STAGE CORPORATION
PSC-11845**

**Showing passenger stage operative rights, restrictions, limitations, exceptions, and
privileges.**

**All changes and amendments as authorized by
the Public Utilities Commission of the State of California
will be made as revised pages or added original pages.**

**Issued under authority of Decision 98-12-062 dated December 17, 1998, of the Public
Utilities Commission of the State of California in Application 98-05-030.**

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Issued by California Public Utilities Commission.

Decision 98-12-062, Application 98-05-030.

**SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS,
AND SPECIFICATIONS.**

Blue Van Joint Venture, a joint venture, by the certificate of public convenience and necessity granted by the decision noted in the foot of the margin, is authorized to transport passengers and their baggage on an "on-call" basis, between points and places as described in Section IIA, and the airport described in Section IIB, over and along the route described in Section III, subject, however, to the authority of this Commission to change or modify this authority at any time and subject to the following provisions:

- a. When a route description is given in one direction, it applies to operation in either direction unless otherwise indicated.
- b. The term "on-call", as used, refers to service which is authorized to be rendered dependent on the demands of passengers. The tariff and timetable shall show the conditions under which each authorized on-call service will be rendered.
- c. No passengers shall be transported except those having a point of origin or destination as described in Section IIB.
- d. This certificate does not authorize the holder to conduct any operation on the property of or into any airport unless such operation is authorized by the airport authority involved.

Issued by California Public Utilities Commission.

Decision 98-12-062, Application 98-05-030.

SECTION II. SERVICE AREA.

- A. Within the geographical limits of the Counties of Los Angeles, Orange, Riverside, San Bernardino, and Ventura.

- B. Los Angeles International Airport.

SECTION III. ROUTE DESCRIPTION.

Commencing from any point as described in Section IIA, then over the most convenient streets, expressways, and highways to the airport described in Section IIB.

Issued by California Public Utilities Commission.

Decision 98-12-062, Application 98-05-030.